

CITY OF BELMONT
PLANNING COMMISSION

ACTION MINUTES

TUESDAY, AUGUST 7, 2007, 7:00 PM

Chair Parsons called the meeting to order at 7:00 p.m. at One Twin Pines Lane, City Hall Council Chambers.

1. ROLL CALL

Commissioners Present: Parsons, Frautschi, Horton, Mayer, McKenzie, Mercer, Wozniak
Commissioners Absent: None

Staff Present: Community Development Director de Melo (CDD), Senior Planner DiDonato (SP), Associate Planner Walker (AP), Zoning Technician Gill (ZT), City Attorney Zafferano (CA), Recording Secretary Flores (RS)

2. AGENDA AMENDMENTS - None

3. COMMUNITY FORUM (Public Comments) - None

4. CONSENT CALENDAR

4A. Minutes of 07/03/07

MOTION: By Commissioner Wozniak, seconded by Commissioner Mayer, to accept the Minutes of 07/03/07 as presented.

Ayes: Wozniak, Mayer, Horton, McKenzie, Mercer, Frautschi, Parsons

Noes: None

Motion passed 7/0

5. OLD BUSINESS:

5A. 3817 Naughton Avenue – Revised Landscape/Elevation Plan

ZT Gill summarized the staff memorandum, recommending approval.

Chair Parsons stated that he could not approve the Chinese Elm being proposed, as it is a fast-growing tree subject to breakage in the wind, and recommended that a tree be selected from the basic tree list provided by the City.

MOTION: By Commissioner Horton, seconded by Commissioner Wozniak, to adopt the Resolution approving the revised Landscape/Elevation Plan for 3817 Naughton Avenue with the addition of a condition that the Chinese Elm be replaced with a tree from the City's tree list, subject to approval of the Community Development Department.

Parsons **Ayes:** Horton, Wozniak, Mayer, McKenzie, Mercer, Frautschi,
Noes: None

Motion passed 7/0

6. PUBLIC HEARINGS

Chair Parsons announced that half-sized copies of plans of the various projects were available on the table for review by members of the public.

6A. PUBLIC HEARING – 2100 Coronet Avenue

To consider a Single Family Design Review to construct a 1,951 square-foot addition to the existing 1,542 square-foot single family residence for a total of 3,493 square feet which is below the zoning district permitted 3,500 square feet for this site. (Appl. No. PA 2007-0030)

APN: 044-013-060; Zoned R-1B

CEQA Status: Categorical Exemption per Section 15301 (e)

Applicant: Coast to Coast Development

Owner: Greg and Angela Weinman

Project Planner: Jennifer Walker, (650) 595-7453

AP Walker summarized the staff report, noting a correction that the existing home was built in 1939 rather than 1960, but is not presently a designated historic resource. Staff recommended approval with the conditions attached, and with the additional condition suggested by Commission Frautschi that, prior to any grading operations, all property owners within a 300' radius be notified of the amount of work to be done, the staging area and the times when that would be completed, as well as contact information for the project manager.

Responding to Commissioner Mayer's question about the purpose of the basement room, AP Walker stated that the applicant did not indicate a use, that it is accessible only from a stairwell at the rear of the garage, and that they would not be able to obtain permits to add a kitchen. She added that she believes the den meets the 70 sq.ft. requirement for a bedroom, except that the addition of a closet would take away from the 70 sq.ft.

Responding to Vice Chair Frautschi, AP Walker stated that the pavers are permitted in a side yard in the setback area.

Commissioner McKenzie pointed out that one fruit tree is being removed. AP Walker responded that trees are being added to compensate for removal of that tree.

Chair Parsons opened the Public Hearing. No one came forward to speak.

MOTION: By Vice Chair Frautschi, seconded by Commissioner Horton, to close the Public Hearing. Motion passed 7/0 by voice vote.

Commissioners were unanimous in their support of the project. They particularly liked that the design successfully blends the new architecture with the old and that the additional landscaping complements what is already there. Commissioner Mercer suggested that, to reduce the amount of hardscape, some of the walkways in the back could be replaced with something more permeable.

MOTION: By Commissioner McKenzie, seconded by Commissioner Horton, to adopt the Resolution approving a Single-Family Design Review for 2100 Coronet Avenue (Appl. No. PA 2007-0030) subject to the conditions attached, with the added condition that, prior to any grading operations, all property owners within a 300' radius be notified of the amount of work to be done, the staging area and the times when that would be completed, as well as contact information for the project manager.

Ayes: McKenzie, Horton, Mayer, Mercer, Wozniak, Frautschi, Parsons

Noes: None

Motion passed 7/0

Chair Parsons noted that this item may be appealed to the City Council within 10 calendar days.

6B. PUBLIC HEARING – 1805 Ralston Avenue

To consider a Single Family Design Review and Floor Area Exception for a 1,095 square-foot addition to the existing 4,260 square-foot single-family residence for a total of 5,355 square feet that is greater than the maximum permitted 4,500 square feet for this site.

Application. No.: PA 07-0038); APN: 045-090-740; Zoned: R-1H (Single Family Residential)
CEQA Status: Categorical Exemption per Section 15301

Applicant: J.R. Rodine

Owner(s): John and Cheryl O'Neill

Project Planner: Damon DiDonato (650) 637-2908

SP DiDonato summarized the staff report, recommending approval. He noted that questions submitted by Commissioners before the meeting had been answered prior to the meeting, and added that in view of the constraints that would be imposed, the prospect of a subdivision would be highly unlikely.

Responding to Commissioner Mayer's question about the proposed party room, SP DiDonato explained that it will be a recreation room and that the reason they could not put windows on one wall is that they are going to be placing a high ornate bar structure along that wall, and that he believed neighbors had been informed of the intended use of the room.

J. R. Rodine, applicant, thanked CDD de Melo and SP DiDonato for their help, and added that the owners concur with all of the conditions. He stated that the room could have been called a family room and that the property owners have a large collection of antique bottles and a very large antique bar that the room was created to accommodate. Responding to Chair Parsons' question regarding the option of combining this room with the existing family room, he stated that the possibility of having to contend with a flood elevation zone and the practical and appropriate flow of the house would have been problematic.

Responding to Commissioner McKenzie, SP DiDonato stated that there is no trigger for a 3-car garage, and that the project provides for 2 cars covered and 2 cars uncovered in the driveway, as well as guest parking at the left corner of the project and a paved access way where additional cars could be stacked.

Chair Parsons opened the Public Hearing. No one came forward to speak.

MOTION: By Vice Chair Frautschi, seconded by Commissioner Horton, to close the Public Hearing. Motion passed 7/0 by voice vote.

Vice Chair Frautschi read the following statement for the record:

Floor Area Exception Analysis is based on what has come before. Therefore, as a result of changes that occur in properties due to the issuing of permits over time the data begins to reflect the cumulative affect of these changes. For example, if Floor Areas increase in a particular zone or neighborhood, over time the numbers for preventing or lessening inconsistencies in floor area ratio standards among neighboring properties grow higher resulting in increasingly larger structures. The R1-H designation to which the 1805 Ralston property is assigned seeks to cap this growth and climax expansion to 4,500 square feet. This corresponds to the largest single family development allowed in Belmont.

Section 4.2.10 of the Zoning Ordinance assists us with the guidelines under which an exception might be granted for single family floor area standards. In my opinion staff's argument *to prevent or lessen inconsistencies in floor area ratio standards among neighboring properties* is without merit with respect to 1805 Ralston. The standard is 4,500 square feet. This application seeks to go far beyond that cap by 855 square feet. There are currently only two properties included in the analysis above this cap and they were developed prior to the adoption of the R1-H designation in the 1970s. If this exception were granted this home in actual size would be the largest in the analyzed area.

It is my opinion that exceptions should, and only rarely at that, be granted to address immediate health and safety issues of a property or as zoning ordinance 4.2.10A proposes to provide

adequate off-street parking. The granting of this exception for 1805 Ralston seems to me to be a grant of special privilege and inconsistent with the intent of our General Plan and the intended guidelines of the Zoning Ordinance originally established for R1-H areas.

Additionally, I can not find for finding #2: *The addition will not adversely affect the views or privacy of adjacent property.* With the proposed addition of a 1,095 square foot party room located at the minimum setback of 9 feet from the west property line there is, indeed, a definite concern for the privacy of the adjacent property, whether now or in the future. Therefore, for these reasons I would vote to deny the Floor Area Exception and the resultant Single Family Design Review.

Commissioner Horton disagreed, stating that she believed that the R1-H district was developed to stop the subdivision of property in the neighborhood and not so much to set a cap of 4500 sq.ft., and that calculation of the square footage of the lot supports even a larger house than is proposed. She did not find 5300 sq.ft. to be excessive and supported the project.

Commissioner Wozniak did not agree with staff that the addition is compatible with neighboring properties since they are not that large. Her two minor issues were the building bulk and the privacy of adjacent property owners. She would like to see it scaled back a bit but agreed that the site can support this large of a building.

Commissioner Mayer agreed that Vice Chair Frautschi's concerns were valid, but supported the other Commissioners that the lot is such that it can support this project. He would not be in favor of any opening on the neighbor's side, but suggested the addition of an architectural feature of some kind to set it off, and thought it could be brought down to a smaller size.

Chair Parsons commented that he liked the house when the Commission approved the first redo of this house and felt that the landscaping is probably the nicest in Belmont. His concern was that the party room is only 9' from the property line and had difficulty making the finding with respect to the possibility of the bulk relative to the location on the lot and to the privacy of the neighbors. He felt that if the addition had been pushed back and wasn't quite as big or would be somewhere else on the lot he would have no problem supporting the project.

John O'Neil, owner, reiterated that the size of the addition is predicated on their purchasing of the 18' long and 12' high antique bar, adding that the room is situated in the very far back corner of the neighbor's yard so there is no privacy issue. He stated that they have been proud of their job as caretakers of this exceptional parcel and have absolutely no intention to subdivide it. The reason they bought it was to preserve it and they are very interested in preserving Belmont's history and some of the larger homes, and have no intent to do any further remodeling. They would be interested in putting in some architectural detail or a faux window. They discussed the addition at length with their neighbors, who have absolutely no issue with the addition, and every person who came to their outreach meeting was in support of the project.

MOTION: By Commissioner Horton, seconded by Commissioner McKenzie, to adopt the resolution approving a Floor Area Exception for 1805 Ralston Avenue, (Appl. No. 2007-0038) subject to the conditions attached.

Ayes: Horton, McKenzie, Mayer, Mercer, Wozniak, Parsons
Noes: Frautschi

Motion passed 6/1

MOTION: By Commissioner Horton, seconded by Commissioner McKenzie, to adopt the Resolution approving the Single-Design Review for 1805 Ralston Avenue, (Appl. No. 2007-0038) subject to the conditions attached

Ayes: Horton, McKenzie, Mayer, Mercer, Wozniak, Frautschi, Parsons
Noes: None

Motion passed 7/0

Chair Parsons stated that these items may be appealed to the City Council within 10 calendar days.

6C. PUBLIC HEARING – 2850 Belmont Canyon Road

To consider a Single Family Design Review and Floor Area Exception for a 925 sq. ft. expansion of an existing single-family-dwelling, resulting in a total of 3,346 square feet that is greater than the maximum permitted 2,421 square feet for this site.

Application. No.: PA 07-0039); APN: 043-072-320; Zoned: R-1B (Single Family Residential)

CEQA Status: Categorical Exemption per Section 15301

Applicant/Owner: Linda Gorgolinski

Project Planner: Damon DiDonato (650) 637-2908

SP DiDonato summarized the staff report, recommending approval subject to the conditions in the report. Responding to a question received from a Commissioner after preparation of the staff report regarding how the home compares to other homes in the vicinity in terms of floor area ratio (FAR) and slope, he stated that he had placed on the dais a table that shows that most of the homes in the area are quite steep and approximately 70% of them would be exceeding this slope by today's standards. He noted that these homes were built in the early 1980's, prior to current slope requirement.

Commissioner Mayer asked what initiated this process. Staff replied that their understanding was that the property owner was preparing to sell the home and wanted to have a clean title and make sure that everything that was constructed in the home was memorialized in City records. It was staff's understanding that they were aware that permits would be required for this expansion.

Commissioner Mercer asked if there had been any fines or penalties associated with building outside the code. CDD de Melo responded that the applicant came to staff with this issue and had

been meeting in good faith to bring it before the Commission; no fines or penalties have been assessed.

To clarify the procedure, CA Zafferano stated that if the Planning Commission denied all or some portion of the requested application, the applicant would have the option to appeal that determination to the City Council. If the applicant was dissatisfied with Council's determination, she would have the opportunity to go to court and request that the court overturn the Council's decision. In the meantime, the City could file an action to abate the public nuisance created by building without a permit. The two cases would be heard at the same time. The Commission's decision is not whether or not to remove the construction; it is simply to grant or deny the FAR exception. It would then go through the City Council and the court can decide what happens to it.

Commissioner McKenzie asked how staff and the Commission missed this FAR violation originally. SP DiDonato responded that there is a certain degree of trust that staff has in architects when plans are submitted but that typically staff today would check any plan when it was 100 sq.ft. maximum or less. For some reason that did not occur 10 years ago. Chair Parsons stated for the record that no one presently on staff was here at the time but that he was on the Commission. He concluded that some applicants cannot be trusted in regard to square footage and that staff and the Commission need to do their own checking. His recollection is that the current media room did not exist in the plans - it was crawl space and not considered livable square footage – and that it was going to be filled mostly with dirt. It has obviously been excavated down deep enough to have a habitable room.

Responding to further questions from the Commission, SP DiDonato stated that the accessory structure was originally intended to be a playhouse and that the other homes along the same road that exceed the current FAR maximum were built prior to the current FAR standards.

Linda Gorgolinski, owner/applicant, stated that she agreed with the staff report. She explained that she bought the lot in 1998 with approved plans and permits, and the house was built to the approved plans. In the fall of last year, they realized that there was an error in the calculation of the square footage of the plan. Even though the house was built to the plan, the actual square footage is over the amount on the plans. The square footage error was discovered when she asked her contractor to help her obtain permits for an administrative variance on the two interior spaces – the pantry and the media room. The contractor found the error when scaling the plans and brought it to the attention of the Planning Department and asked for guidance on how to resolve the problem. CDD de Melo's recommendation was that they bring all of the issues to the Commission. She eventually had a contractor add sheet rock and carpeting to the two unfinished areas but no square footage was added. There were no windows or egress added so it cannot be considered a bedroom and was originally approved as unfinished space to store the heating and air conditioning systems and there was no change to the original footprint. The air conditioning and heating people suggested that, to be more energy efficient, it would be best to move the systems to the back side of the wall. Both the pantry and the media room were existing when the final house was done so the electrical that was there was all inspected at the same time. Her intention was to pull the permits, and she did not expect it to be an issue until she discovered the other square footage issue with the plans. She agreed with the staff report that there is no impact to the surrounding neighborhood, it is not outside the original footprint and she was asking for approval.

The accessory building was created just as a play house, was built by a licensed general contractor, and an electrical permit was obtained. Prior to building it, she was told by the City's building inspector that only an electrical permit was needed - no building permit was required. Her neighbor who sees the structure wrote a letter saying that they have no issue with the structure; they're happy with the way it looks.

Responding to Commissioner Mercer, Ms. Gorgolinski concurred that the fact that she came back to Planning Department at this point to ask for a permit for the additional area means that she did understand when she finished that area that it was not permitted.

Eric Sommers, the general contractor who built the home, explained in detail how the discrepancy came about, noting that the building inspector at the time agreed that relocating the mechanical equipment to the back wall was preferable so they could use the vent system. He said he was aware of the requirements but believed he could come in at a later stage to essentially legalize it, given that there was relatively little work involved in putting the wood floor in the pantry and the slab in the media room. As far as the play structure was concerned, it was under 20 sq.ft. and included a switch and two overhead lights. A neighbor complained to Code Enforcement and the Chief Building Inspector came out and measured the structure and requested that a permit be pulled for the lights and said no other permits were required. Ms. Gorgolinski had picked up the building permit for the house after all of the review processes had taken place prior to her purchasing the property – the project was approved in its current form. Staff determined that the plans they were working off of were consistent with the copy that had been signed off by the City, and they that all the measurements are consistent with what was actually built, but when they totaled them they came up to 452 additional square feet.

Commissioner McKenzie confirmed with Mr. Sommers that he was the original contractor. Mr. Sommers added that since he was engaged to the owner at the time he had not estimated or bid the project, so that the discrepancy in square feet was not an issue.

Chair Parsons opened the Public Hearing. No one came forward to speak.

MOTION: By Vice Chair Frautschi, seconded by Commissioner Mayer, to close the Public Hearing. Motion passed 7/0 by voice vote.

Vice Chair Frautschi read the following statement for the record:

Of the eighteen adjacent properties utilized to analyze the floor area exception, five (5) do not exceed the allowable FAR, while thirteen (13) exceed the allowable FAR. So, based on FAR criteria clearly 70% of the structures in the survey area are legal non-conforming. As planning commissioners we are hard pressed to deal with correcting those inconsistencies, however, we do have an obligation and authority to deal with 2850 Belmont Canyon Road seeking a floor area exception recommendation from us this evening.

My initial knee-jerk reaction is to never reward bad behavior. However, it appears with respect to the scaling of the original approved design, analysis errors were made either as a result of staff inattention or applicant architectural misrepresentation. At this point the “why” of what

happened is not our major concern, however, the “how” can we equably and fairly address a structure that is 925 square feet larger than the code allows IS our task, especially since it appears construction continued well beyond the original approval for this property.

My recommendations are these:

1. The 452 square feet of additional floor area constructed throughout the home would remain since it would be difficult, if not impossible, to determine exactly where this additional square footage has been built.
2. The 123 square feet of additional floor area pantry, illegally constructed in the entry level is to be removed.
3. The 237 square feet of additional floor area illegally constructed as a Media Room is to be removed. In addition to being unauthorized space constructed subsequent to the approval of the original design this subterranean room has only one opening for ingress and egress. In my mind this is a clear and real situation for potential disaster should escape from this room by an alternate route become necessary.
4. The 113 square feet of additional floor area within the detached accessory building is to be eliminated by either lowering the ceiling height of this play house below 6’ 6” or by the total removal of this structure.

These recommendations would more or less split the baby. The applicant would reduce the excessive square footage by 473 square feet; however, they would be allowed to retain the 452 square feet that was constructed throughout the home. If these conditions could be met, I could then support a floor area exception [of practical necessity] for the 452 square feet as described for this property.

Commissioner McKenzie felt that memorializing the project would be compounding one mistake by committing another mistake on top of it, and would be setting a precedent. He concurred with Vice Chair Frautschi’s recommendations.

Commissioner Mercer pointed out that the City’s established allowable floor area ratios with respect to the slope of the lots, is was not done just for aesthetic reasons but for structural and safety reasons, and she felt this is a structural engineering safety issue where this property is in excess of what was deemed to be safe and appropriate for this slope. She could not see penalizing the owner for mistakes made by the City, but could not approve the owner’s conscious expansion into what was supposedly unexcavated hillside. She felt that if that had been brought to the Commission as a fully excavated space, they very likely would have said that it was excessive grading, excessive hauling on a very steep hillside, and that experience has taught them that they would not approve excavating that space at this point. She could not find that that additional space is warranted. With respect to the play house, she felt that they would have permitted that as a playhouse or a tool shed, but not as something that is scaled to be livable, habitable space – not accessory living quarter proportions. It needs to have a low ceiling and be childlike or garden tool

like, not “in-law quarter” like. She concurred that it could be remediated by either scaling it back so it is truly childlike or by removing it entirely.

Commissioner Horton agreed that the 452 sq.ft. that was a mistake on everyone’s part at the beginning should be ignored, and felt that if in fact the detached accessory building was not required to be permitted by staff, then the additional square footage that was built without permits actually would have been approved as an administrative exception. She would recommend that they be required to tear down the accessory building except that if there is evidence that it was approved as not having to be permitted, then she would see it as an administrative approval for 360 sq.ft. of additional space and all of the fees that go along with that. She said she understood how things that are drawn on drawings do not get built the way they’re drawn. She questioned whether the media room complies with existing code, and if it does not it has to be returned to a storage area or something similar. SP DiDonato responded that it was his understanding is that it meets code for something other than a bedroom. Commissioner Horton said that she did not think it should be ripped out – there were mistakes by both parties and maybe they need to call it even.

Commissioner Wozniak concurred with Vice Chair Frautschi’s solutions. She disagreed with staff that this does not set a precedent because if they approve it, how ever much it goes over the FAR goes on another table, just like the one in this report, and becomes the standard. She did not like to ask people to tear out living space, however, this is a media room and a pantry. She felt that the suggestion to lower the ceiling in the accessory structure was a good one.

Commissioner Mayer did not like the thought of having to ask somebody to tear out something that has already been built, but it was done consciously, obviously knowing that it was not permitted when it should have been permitted. He reluctantly concurred with Vice Chair Frautschi’s solutions.

Speaking as the only person who was around when this project was originally approved, Chair Parsons stated that he would not have approved this project had the media room and pantry been shown with a ceiling height that made them livable. He agreed with the consensus that the existing square footage was an error that could probably not be corrected. He was especially concerned about the media room because there are no windows and no access and, due to the fire hazard, he could not approve the exception for that space to exist as a space where someone could put a bed or fall asleep watching TV. Regarding the small house, he suggested that the problem could be solved by either lowering the roof or raising the floor. SP DiDonato interjected that another possibility would be removal of the walls and put rails instead, so that one side would be open and it would no longer be considered floor area. Chair Parsons added that he would like to find a way that the little building could be kept on the site, but that he could not vote for an exception that would allow the media room to exist with a floor in it and be usable. He mentioned that the pantry is small and not a living space, but they do not necessarily want to set that chart up for larger houses in the future.

Commissioner McKenzie asked if another option would be to acknowledge the mistakes that were made, leave the new living space intact and just not approve the Variance. CA Zafferano clarified that this is not a Variance, it is a Floor Area Exception. He added that if the Commission is inclined to grant some of the square footage, he suggested that they recommend a motion to approve the

FAR exception for an additional 452 sq.ft. subject to or on the condition that the other square footage be removed in some way, and then if the applicant disagrees with that they are certainly within their rights to appeal that to the City Council.

MOTION: By Chair Parsons, seconded by Commissioner Wozniak, that the FAR for 2850 Belmont Canyon Road (Appl. No. 2007-0039) be granted to include only 452 square feet of living space, and the ceiling-to-floor heights of the media room, pantry and accessory structure will be reduced to be less than 6'6".

Ayes: Parsons, Wozniak, Mayer, McKenzie, Mercer

Noes: Horton, Frautschi

Motion passed 5/2

Chair Parsons called for a break at 8:50 p.m. Meeting resumed at 9:00 p.m.

7. NEW BUSINESS

7A. Notre Dame de Namur University (NDNU) - 1500 Ralston Avenue – Koret Athletic Field – Code Compliance/Status Report

CA Zafferano announced that four Commissioners would recuse themselves because of a financial conflict of interest. Commissioners Mercer, Horton, and McKenzie and Vice Chair Frautschi left the room. CA Zafferano then explained that since the three remaining members do not constitute a quorum, the Rule of Necessity allowed them to bring one Commissioner, selected by random drawing, back to the hearing. That person will be present for the discussion and also any subsequent hearings on the matter. Each Commissioner had written his/her name on ten pieces of paper, thereby equalizing the odds and making the selection more random. RS Flores then drew Vice Chair Frautschi's name from the bowl, who was then invited to return to the room.

CDD de Melo summarized the staff memorandum, adding that since the staff report was made available to the public, there have been a number of communications to the City and to NDNU, and that an email was received from former Councilmember George Metropolis relative to the activities as well as a subsequent letter prepared by Sam Horowitz that was a response to the staff report.

Commissioner Wozniak commented that no where in the report does it state if these are valid concerns and if all of the issues that were brought up by the neighbors are actually violations of the Conditional Use Permit (CUP). CA Zafferano explained that the reason for that is because this is not the revocation hearing. What staff has presented is essentially both sides – ultimately it will have to be the Commission's decision regardless of staff's recommendation – if they decide to set a revocation hearing in the future as to whether these are or are not violations. He added that, in reviewing the information in the staff report, it appears that there is a difference of opinion regarding whether they are violations or not, especially with relationship to the definition of certain terms that are in the CUP. At this stage it would be difficult for staff to take a position as to whether it is or is not a violation without some further exploration and making sure that they get

all the evidence and testimony on the record at some subsequent hearing, although the Commission can hear from staff and from members of the public tonight. Commissioner Wozniak did not understand why they can't be clear about it, because some of the conditions dealt with time – activities for example, not a matter of opinion – either there were people there or there were not. Were the police called, were people there when they weren't supposed to be? CA Zafferano stated that it is fair to say that some of the issues that are raised in the list of problems are clearer than others, and staff had not taken a position one way or another on those. If there is an allegation that a game started a half hour or an hour before it was supposed to start, he felt they could conclude that that would be a violation of the CUP. On the other hand, there may be a question as to whether the participants who were involved at that particular time met the definitions of what was not supposed to be happening at the time in the CUP, and that may be something NDNU has some argument about. He believed that is why staff prepared the report the way they did. Commissioner Wozniak responded that at the time that the permit was approved she asked for a very detailed plan of usage of the field that takes into account all the uses at the time. The applicant did say that there would be no increase in usage and she wanted to know what the uses were at that time and if they have increased. CDD de Melo will defer that to the applicant, because back in August of 2005 lacrosse was definitely an activity that was in play for the University as well as soccer but he would have to defer to the applicant relative whether use has increased in intensity from when it was originally approved. He added that a document has not been presented to the City that chronicled the increase or decrease in activity related to athletics on that field from August 2005 until now.

Commissioner Mayer wanted to know if the uses are substantially the same then as they are now. Were there problems before 2007 with neighbors and what were the problems, if any, at that time and how were they being dealt with, and if there were none, what has changed in the meantime that has brought us to the present point? He also asked if there have been complaints from neighbors up the hill. CDD de Melo responded that the preponderance of complaints and concerns have been from residents to the South of the field relative to this CUP.

CA Zafferano noted for the record that those Commissioners who are recused may come into the room during the public comment period, speak at the microphone, and then they need to leave at the conclusion of their own public comments.

Commissioner Mayer could find no reason in all of the reports for removal of the Eucalyptus trees. CDD de Melo responded that the field was completely modified, a berm was created to allow for potential noise blockage and to allow for new plantings. The trees were in relatively good health but the concern was, in the modification of the field area, that the location of those trees was in conflict with construction of the berm, the bleachers and the engineering and configuration of the field. He added that the Commission carefully agonized over the removal of the 30 trees but the thought process at the time was that they were going to be losing these trees, which, while they were large in scale and may provide some sound blockage, were not the most ideal tree to retain for future generations. So the conditions were amended to allow for Coast Redwoods to be installed. They will take time to grow but eventually, if properly maintained, will create a nice screen and potentially an added noise shield from the activities from the field. Chair Parsons added that he said at the time that those trees were a very effective sound barrier but we they were led to believe that the trees were required to be removed because the field had to be a certain size to meet NCAA requirements. Vice Chair Frautschi added that two years prior to removal of the trees, two

Eucalyptus trees had fallen, one across Ralston, that were the same age as these and though most of the trees were healthy, there were a large number of them that were not. In addition, there was the issue of maintaining an artificial field with this dropping sap that comes as a result of Eucalyptus trees. Also, they needed an area large enough to shift the dirt to create the berm and the logical place to put it was as a screen.

Chair Parsons said he too had hoped that they would receive a spreadsheet that outlined both sides of the issues, maybe using police calls as a basis for the number of complaints, and then some kind of evaluation. He felt that they would definitely need that kind of data if they continue with any revocation hearing in the future. CDD de Melo stated that they could certainly prepare that as part of any future action.

CDD de Melo explained the attachments, noting that everything in Attachment A was information presented by the concerned neighbor, Attachment B was a spreadsheet prepared by NDNU of the neighbor's concerns with an added column with NDNU's rebuttal, and Attachment C is staff reports, and meeting minutes as prepared by staff.

CDD de Melo did not believe this meeting was the time to try to rewrite the CUP or define "youth" or "dusk." Chair Parsons added that they were primarily there to hear from both sides and then make some decisions.

Chair Parsons opened the meeting for public comment, asked that there be no applause, and that comments be kept to 3 minutes.

Jim Ralles, resident of Chula Vista Drive up the hill, read comments given to him by his neighbors Joe and Josephine Nicoletti. They are supportive of NDNU and consider physical education and sports to be an integral component of the University. They hear the noise from the playing field but rather than finding it disturbing they are pleased to hear the youth and the young people having a good time. Speaking for himself, Mr. Ralles concurred.

Laura Cattarin, resident of Chula Vista Drive, supported the University and felt that the activities on the field are stimulating, invigorating and spirit lifting. She asked the Commission to accept staff's alternative action #1 as listed in the staff report.

Mary Morrissey Parden, business owner at Carlmont Shopping Center, recalled that the Belmont visioning process included commitment to youth sports and to NDNU as a central partner with the Belmont community. She felt that the business component of the NDNU field is an important consideration due to the large financial investment and the fact that it attracts not only student athletes but non-athletes to the community. It was her opinion that because of the extensive involvement and advice of the City of Belmont staff and officials, it is possible the City may have some compensatory negligence should this field not be utilized as it was applied for and approved by staff. She felt that the noise ordinance should allow for normal usage of sports fields for the intention and purpose for which they were built, and if it does not it may be that the ordinance needs revision before consideration of the revocation of the use permit. She feels the two parties need to work through these matters and find workable solutions.

Gary Swanson, resident of Chula Vista Drive, went on record as supporting the previous 3 speakers. He was there to back the college's use of the fields, and for him the noise and absence of the trees or the replanting is completely a non-issue and he did not understand the objections.

Maureen Freschet, Executive Director for Community Relations at NDNU, stated that the University is very committed to working with the neighbors on the task force, and recognized that they have made some mistakes and violated the CUP at times. They have taken measures to correct violations and continue to work to correct violations and believe they can be collaborative with their neighbors and come to some solution. She felt that when they walked out of the July 23rd meeting most of everyone from the NDNU side felt very positive that they were moving forward in a good direction, and everyone who was present in the task force with the exception of one person had actually talked about postponing this meeting to give the process a chance to work. Referring to Mr. Horowitz's comments in his letter to the Commission, she stated that they were asked by the neighbors at the May 23rd meeting to come back to the committee with a wish list, pretending there was no CUP and stating how they would really like to use the field. She was thus concerned to see comments in his letter saying they were making a list of demands, when it wasn't the University's idea to come forth with a wish list. They were using it as a first stepping stone to further dialogue, looking at our wishes and the neighbor's wishes and the hopes for arriving at some kind of good collaborative solutions. She reiterated that they hope that they are given the opportunity to work through the process because she believes it is totally doable.

Gordon Seeley, resident of Chula Vista Drive, stated that he would have been at the meetings objecting to this CUP in 2005 had he been notified.. He does not believe 300' requirement for notification is sufficient and hoped the Commission could do something about that. He felt that the old field was more suitable to the limited space available and was peaceful and relatively free of noise pollution. He also felt that the college seems sadly uninterested in the rights of neighbors to peace and quiet and that their wish list for Koret Field betrays a tin ear to the neighbors' concerns. He pointed out that the 2005 CUP included a requirement for an acoustical report that was not made until February 2007 and that a promised name of a new acoustical engineer had not been sent to him. He asked for the Commission's help; he does not find the noise lovely but finds it disturbing.

Margaret Davis, resident of Chula Vista Drive, stated that up until about three years ago, before lacrosse was introduced, the field was not much of a problem, only occasional noisy events one to three times a year. She had invited Councilmember Feierbach and a Planning Commissioner to her home to hear what they were complaining about, and were assured that the new noise ordinance would take care of the problem. The noise is still as much as ever, so they are working on the task force and hope that the college will be able to find acoustical engineers to lessen the noise and help them work it out.

Mallory Barr, speaking on behalf of the Associated Students of NDNU, felt it was important to share the precarious situation they find themselves in. They are proud of their University but are also conscious and caring members of the Belmont community. The field has been a rallying point for the student population but has since developed into an issue which has made them uncomfortable in Belmont. She felt that it is important that the talks that have taken place be allowed to continue.

Risa Horowitz, resident of Ralston Avenue, related that at the very first task force meeting and again at the second she had recommended that actual times of permitted use of the CUP be posted on each of the entrances to the University and her recommendations had not been adhered to to date. At the first task force meeting, they had requested that the University have their acoustical engineer present at the second task force meeting, which did not happen. She feels that NDNU needs to hire a competent qualified professional acoustical engineer to determine how to deal with this noise issue. This person needs to have a proven track record and suggested that they find out who Menlo College used, since they had a similar problem. She understood that they do not want to get into the definitions, however, she personally felt that there has been a distortion of permitted hours, a distortion of intended use of Koret Field and repeated violations of the CUP. She felt that NDNU is trying to circumvent the definition of “youth” by claiming that any individual who has a student id card is a youth, which would probably include graduate students as well. She wanted the Commission to know that she was there to go over any points, provide clarification, answer any questions and offer opinions on direction forward.

CDD de Melo clarified that the acoustical study was prepared to address condition #10 of the CUP. It described the optimal placement of speakers and noise equipment associated with the operation of the field. Through these task force efforts over the past 4 months there has been discussion of expanding that study to continue with a whistle test to work on potentially the least noisy whistles relative to their use for practices. They also asked that an acoustical engineer selected by NDNU, if his/her schedule permitted, attend two upcoming games and be at various vantage points on the field during the games to measure noise and then go off site as well to various vantage points to see how noise travels. There was an acoustical study prepared that is proposed to be expanded, there are some action items coming up to try and work with acoustical considerations to try and move forward to a more optimal solution. He felt that some progress had been made but that more can be made.

Tim Shoogidan, Chief Operations Officer and CIO at NDNU, reported that they have given Dennis Paletti of Shen, Wilson and Wilkie Inc., acoustical engineers, a copy of the CUP and he had already visited the field, will be there again the following week, had a series of tests planned to perform before the September 22nd game, and had a number of ideas about the testing.

Chair Parsons stated that the issue of the noise level associated with whistles and horns at lacrosse games vs. soccer games needs to be addressed as part of the overall noise problem.

Mr. Seeley returned to the podium to allege that the acoustical study required by item 10 of the approved CUP did not happen until the field was already in use in February 2007 and that the name of the acoustical engineer promised by Mrs. Frischet on July 26th had not as yet been received by him. He believes the acoustical studies are at the heart of this problem and are what need to be looked at.

Jack Oblack, President of NDNU, reiterated that they are trying to work through this. He explained that one of the things that happened in the very beginning was that they had a bunch of very anxious and eager coaches, and players and students who had been off the field for two years and were eager to get back on their own field. They are trying to work through the process of an

operations procedure. He thinks part of what is happening is that sound is skipping right up over the top of the berm; he doesn't know how they will handle that and need an engineer to tell them. He said that they objected to that design in the beginning but went through with it because everyone said that that's what they needed to do. He added that they are not going to get at the problem with the angst and anxiety being expressed in conversations – they need to have a community that is going to hear them and understand that they are a productive member of the community. They just completed an economic study that reveals that over \$900,000 goes directly in Belmont's coffers a year out of just their population on the campus and over \$51 million in value in the County of San Mateo. They want to be a cooperative member of the community and do not want people yelling about sound or noise. He stated that there is a difference between soccer and lacrosse; lacrosse is the fastest growing sport in the state of California and draws just about twice as many students as a soccer game so there will be a difference in noise level from the volume of the spectators. He added that the only other thing that they have done on the field that is different is to replace softball with high school women's soccer – they have the exact same number of sports that happened before they put in the artificial turf.

Commissioner Wozniak asked what exactly they have done to make sure the conditions of the CUP would be met. Mr. Oblack responded that the Athletic Director has full-time and part-time coaches that he has worked with to instruct them on what the hours are. They have not placed a sign with the hours as yet because they do not know the definition of "dusk" and need to get some parameters. They're looking at trying to move the scoreboard so that they can change the direction of the air horn that is in the scoreboard away from the neighborhood. The engineer who is coming will be able to move things around to where they work the best. They turned the spectator stands and put them on the side of the field that backs to Ralston so that they could direct the sound toward the field instead of the neighborhood. They did not know until July 25th that some of the plantings that were supposed to have been put in along the berm were not planted; they are now getting bids on the approved plants and they will be put in.

Chair Parsons stated that there are a lot of issues that need to be resolved but they do not have the data needed from staff that he would feel comfortable moving forward on this issue. He suggested that they need to continue working and believed they all recognized the value of NDNU to the City and of being able to live in their homes peacefully. His suggestion was that staff continue with meetings, come up with a list of what they think they can solve and what they can't solve, and find someone who can run the meetings who does not have a vested interest and can be completely objective. He wanted to get the politics out of it and make it an objective task force with a pure goal of solving a problem. He believes most of the people in Belmont want to keep the University here and that the University wants to be a good neighbor. He suggested that perhaps they need to inspire the University a bit and recommended that they set a tentative date for a revocation hearing that puts some pressure on that side. He also would ask for regular reports on what has happened and what has not happened and some quantification of what is going on by reports from the Police Department with statistics that if complaints are made, are they valid and what was done about them. He believes the City has to act as an enforcement agent because they do have a CUP in place with rules that need to be enforced.

Vice Chair Frautschi stated that he normally would have had to recuse himself and cannot vote on code compliance. He clarified that his house is a half mile from the field but his property is only

500' from the Weingan Gallery. Vice Chair Frautschi read his a statement, which will be made a part of the permanent record.

As a non-affected community member and now as a re-seated Planning Commissioner, I have a few thoughts on the issue before us. From the submitted information and from personal observations, I do believe there is sufficient data to support the claim of repeated violations of NDNU's obligations as outlined in their Conditional Use Permit. Additionally, I would go out on a limb and state that in my opinion there has been what I would refer to as "enforcement light" with respect to the City's obligations in enforcing what has been mandated by the conditions of use. Of the over 25 complaints regarding noise, hours of operation and general enforcement, not one single fine to date has been leveled against NDNU.

This discussion to consider the scheduling of a revocation hearing is NOT about the merits and benefits of soccer and lacrosse in our community. Nor is it about the financial, social or cultural aspects of the University. It is about accountability of NDNU to the community in which it is located. The "we didn't know argument" is never a solid explanation or a reason. Additionally, assertions that *"it is not always possible to control students"* is the most indefensible claim. If a group of students were to crawl through a closed window at Taube Hall for an unauthorized casual get together, I think NDNU

Administration might be able to rise to the occasion to explain why this should not be done. Conversely, I have no fear that students could be made to understand the prohibitions of a locked gate and climbing over a fence to use an athletic field during unauthorized times. This is particular germane since NDNU stated specifically during discussion of the original CUP that this would not be allowed to happen for security and insurance reasons.

There might, and in my opinion, are issues and shortcomings of the Conditional Use Permit constructed by Planning and the Planning Commission, agreed to by NDNU and approved by the City Council. The document was written with the most accurate and inclusive information available to us at the time and with the best intentions of protecting the community while allowing NDNU appropriate use of the athletic field. Hindsight can be a real prescription for visual clarity. It is the Planning Commission's obligation to assist in focusing and bringing as much acuity and accountability as possible to this contract between NDNU, the City and neighbors affected by what occurs on this property. A decision to calendar a revocation hearing

is not a statement of fact or of wrong-doing. It is a hearing to consider the facts and postulate possible remedies and solutions to things currently going awry.

Commissioner Wozniak re-stated that she believes they need a detailed list of actual violations. She thinks conversation and dialogue are great and needed but it does not seem to her that the University is taking the complaints seriously because they have not posted signs as yet. She said that this is not about limiting the use of the sports field in an untoward fashion, it's not about not liking sports, not liking the University – she believes almost everybody there believes the University is an asset to the community and wants the University to thrive. What this is about is a CUP and violating or conforming to it. She would like to see the word “dusk” stricken and replaced with an actual time. After a certain period there are other changes that could be made, but the main thing to her was that they have to look at is that NDNU made an agreement with the City to do certain things and in return they got the entitlements. She does not want to see a revocation of the permit but would like to see clarity and more commitment on the part of the University to follow the conditions for a specified length of time, and if after that time everything works out, they can then work with the neighbors who are complaining to see what they can do to make things better for them and then move on from there. She did not feel a commitment from NDNU and was in favor of scheduling a revocation hearing. She added that it is not a given that this would mean that the permit would be revoked but it is a statement from the Commission saying that we're serious about this. She did not think the City has taken that position yet and that from February to now was quite a bit of time to show us that we are serious. She concluded that she supports the sports, supports having fun, supports feeling good if you hear noise, but also supports that some people don't feel good when they hear noise and if it is beyond the limits we have to do something about it. Otherwise, why are we all here – we make decisions and if we don't enforce them then this is just a big waste of time. She would like to see more data about the uses of the field before and the uses now, and what NDNU is specifically doing and has done to solve this problem. She agreed with what was said about efforts to keep the negotiations going and have other people working together to move this along so that they know that changes can be made. She added that when the sound system is installed there will be another real challenge that will have to be dealt with.

Commissioner Mayer emphasized that it seemed to him that NDNU made a good faith effort to contribute to the process of creating the CUP and to maintain it, and that the burden is on NDNU to show that they are doing that, aside entirely from whatever complaints are coming in. In looking at the reports that came through, he was disappointed in the fact that there were on occasion excuses given instead of right up front acknowledging the fact that a violation occurred and they were going to do our best to see that it does not happen again. He also felt that they could have prepared a much more formal report for the occasion; it came across to him as a rather cold and almost insincere document. He felt that the burden is on NDNU. They might not like the conditions that were imposed – I think there's a lot of agreement that you would like a lot more freedom to use the field in more ways and during more hours – but the reality is that we're dealing with a CUP that was created and we have to work within that frame of reference. He agreed that a lot of the terms “dusk” and “youth” in the CUP are ambiguous, and security of the field is in issue. If they're going to create a secure field then they have to create a secure field and put it under lock and key. He agreed wholeheartedly with all of the comments that have made in a

positive nature about NDNU, this is not an attack on NDNU, it's an attempt to come to a mutually agreeable compromise where you can live with the neighbors and the neighbors can live with you. He would like to see consistent reports issued of violations that have been documented and evidence given as to what the consequence have been, what action has been taken, either by way of discipline or by way of correction of the problem on the part of NDNU.

CDD de Melo summarized that the Commission's direction is to continue forward with a task force style group chaired by a professional mediator with no ties to any group. It is yet to be determined what staff member will be part of that task force. The task force should continue to go forward to work on solutions. A revocation hearing was set for the November 20th Planning Commission meeting. Commissioner Wozniak added that several Commissioners said they would like to see updates with data so they can move toward a decision.

Responding to Commissioner Mayer, CDD de Melo stated that members of the public may call either the Police Department, Code Enforcement or him. They have the tools of an administrative code enforcement process that they can use relative to the investigation of a potential violation and what the remedies are out there for that.

CA Zafferano announced that the following week a meeting was planned to discuss code enforcement in general, not with specific respect to NDNU, but to talk about those procedures and how to establish points of contacts so that on all code enforcement matters they can obtain more accurate data regarding the number of calls and those kinds of things.

Commissioner Mayer expressed concern that calls may go to the Police Department and Planning does not know what action has been taken. CDD de Melo assured him that they exchange information, even on Sundays, and they talk about next steps with the Police Chief and Code Enforcement.

Vice Chair Frautschi asked about the burden of expense of the mediator. CA Zafferano replied that that would be the subject of an agreement between the parties.

8. REPORTS, STUDIES AND UPDATES:

CDD de Melo reported as follows:

8A. Avanti Pizza Commercial Center – 2040 Ralston Avenue

The landscape plan has not yet been provided but they are willing to work with us and do have a landscape architect.

8B. US 101/ Marine Parkway Landscaping Project

He has had discussions with a few Planning Commissioners and Council about formulation of a task force to work on this solution. Councilmember Dickenson has volunteered to sit on this group and Commissioners were invited to talk to him about being on the task force.

8C. 2996 Hallmark Drive

The property owner is aware of the approval granted May 15th for their landscape plan. They have issues with their landscape contractor but are committed that it will be installed in the next 90 days.

9. CITY COUNCIL MEETING OF TUESDAY, AUGUST 14, 2007

Liaison: Commissioner Horton
Alternate Liaison: Commissioner McKenzie

10. ADJOURNMENT:

The meeting was adjourned at 10:30 p.m. to a regular meeting on Tuesday, August 21, at 7:00 p.m. in Belmont City Hall.

Carlos de Melo
Planning Commission Secretary

*CD's of Planning Commission Meetings are available in the
Community Development Department.
Please call (650) 595-7416 to schedule an appointment.*